

REMARKS

The Final Office Action mailed October 26, 2006 has been carefully considered.

Claims 1, 3-5, 9, 11, 12, 16 and 17 are pending and stand rejected.

Claims 1, 3, 4, 9, 11, 12 and 17 have been amended.

Rejection under 35 USC 102(e)

Claims 1, 3-5, 9, 11-12 and 16-17 stand rejected under 35 USC 102(e) as allegedly being anticipated by Young (USP no. 6,898,681), which is the same reason recited in rejecting the claims in the prior Office Action. The Office Action, in response to the applicant's remarks made in response to the prior Office Action, states starting on page 8, that "Young teaches the POT copy is protected until the overwrite of the master store is completed. For example a 'one' in the bitmap indicates the data is mater [sic] store and shadow are different. The decision as to create a new POT copy or to update a POT copy (e.g., including the current one) depends on the user's request. For example, column 11, lines 8-30 of Young teaches ..."

Applicant again thanks the Examiner for providing further reasoning for rejecting the claims. However, applicant again respectfully disagrees with and explicitly traverses the reason for rejecting the claims, but has amended the independent claims to more clearly state the invention. More specifically, the independent claims have been amended to recite that the data copy is protected by designating a current tracking data structure as a transfer data structure and a current transfer data structure as a tracking data structure and that the data copy is unprotected by designating the transfer data structure as the current tracking data structure. No new matter

has been added. Support for the amendment may be found at least in Figures 2 and 8, which illustrate the step of unprotecting the data copy.

Young, as characterized in applicant's prior remarks, discloses a system for providing a copy of data at a point in time that includes a data storage device including a master store arranged to store blocks of data, at least one subsidiary store to store point in time copy data having blocks of data copied from said master store at a particular point in time and a bitmap store associated with each of the subsidiary stores to store data indicating when a data block of the master store differs from a corresponding data block stored in the associated subsidiary store. (see Abstract).

In this case, the Examiner refers to Young protecting the data copy by having a new point-in-time (POT) copy created rather than overwriting the existing point-in-time data copy. Young fails to protect the data by using a transfer buffer and a current buffer to retain the information of which data is to be protected and subsequently unprotected.

It is well recognized that to constitute a rejection pursuant to 35 USC §102, i.e., anticipation, all material elements recited in a claim must be found in one unit of prior art.

Young cannot be said to anticipate the present invention, because Young fails to disclose each and every element recited.

At least for this reason, applicant submits that the rejection of the claim has been overcome and can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claim.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected for the same reason used in rejecting claim 1.

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Thus, for the amendments made to these claims, which are similar to the amendments made with regard to claim 1 and for the remarks made in response to the rejection of claim 1, which are also applicable in response to the rejection of these claims, and reasserted, as if in full, herein, applicant submits that the reason for rejecting these claims have been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining claims these claims ultimately depend from the independent claims, which have been shown to contain subject matter not disclosed by, and, hence, allowable over, the reference cited. Accordingly, these claims are also allowable by virtue of their dependency from an allowable base claim.

Accordingly, applicant respectfully requests withdrawal of the rejection and allowance of the claims.

In view of the foregoing, applicant believes that the application is in condition for allowance and respectfully request favorable reconsideration.


In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at 914 798 8505.

Please charge all fees occasioned by this submission to Deposit Account No. 05-0889.

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Respectfully submitted,

Dated: 12/22/06



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